



EX PARTE ORAL RATE FILED

DOCKET FILE COPY ORIGINAL

TEL +1-202-872-0030

FAX +1-202-872-1331

Direct Dial  
202-872-1264

Internet: JSheldon@CapAccess.org

September 29, 1995

Ms. Regina Keeney  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W. Room 5002  
Washington, D.C. 20554

Ex Parte

Re: PR Docket No. 93-144

Dear Ms. Keeney:

UTC, The Telecommunications Association, is pleased to have this opportunity to comment on staff suggestions for the licensing of wide area Specialized Mobile Radio (SMR) systems on the upper 200 SMR channels in the 800 MHz band. These comments are submitted in response to specific staff invitation, and are premised on UTC's understanding of the current staff proposal, as outlined in a September 18 public meeting.

As you know, UTC is the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. All utilities and pipelines depend on reliable and secure communications facilities to carry out their public service obligations, and the vast majority of utilities and pipelines operate private land mobile radio systems for dispatch, telemetry, and many other functions necessary to the operation of their underlying utility or pipeline service. A growing number of utilities and pipelines are licensing radio systems in the 800 MHz band in order to meet these communications requirements and to take advantage of the enhanced capabilities of the trunked radio systems available in this band.

Utilities and pipelines generally request licensing in the Industrial/Land Transportation category at 800 MHz. However, I/LT channels are exhausted in many areas of the country due to the voracious channel appetite of commercial radio operators hoping to lock-up these channels before the Commission finalizes the rules on the licensing of wide-area SMR systems through competitive bidding. The Commission's

No. of Copies rec'd  
List ABCDE

2

"freeze" on the acceptance of SMR applications stemmed the tide of SMR applications on I/LT channels, but by the time the freeze was instituted, the damage had been done. Intercategory sharing provided some relief for I/LT eligibles, but the Commission foreclosed that avenue to spectrum relief when it instituted a "freeze" on intercategory sharing at 800 MHz.<sup>1</sup>

Although UTC takes no position on the FCC's proposals to auction the upper 200 MHz SMR channels, it does have concerns with respect to the continuing availability of non-commercial spectrum at 800 MHz to meet the needs of utilities, pipelines and other public service/public safety licensees. As UTC understands the staff proposal, channels would remain available in the I/LT, Business, and Public Safety categories for purely non-commercial operations, but that the General Category would be preserved, for at least a limited time, as a relocation home for licensees that are relocated from the upper 200 SMR channels. Further, UTC understands that the staff is considering a Further Notice of Proposed Rulemaking to use competitive bidding to assign wide-area licenses in the General Category as well as the remaining, lower SMR channels.

Based on the foregoing understanding of the staff proposal, UTC offers the following recommendations:

- General Category channels at 800 MHz should remain available for licensing on a first-come, first-served basis by Industrial/Land Transportation eligibles and should not be subject to competitive bidding. Many I/LT eligibles, including utilities, have been forced to use General Category channels to develop their radio systems. If these channels are auctioned on a wide-area basis, it will severely restrict incumbent licensees' ability to expand or modify operations as necessary to meet their evolving communications requirements. The General Category was intended as a "catch all" category of channels that would be available when channels could not be obtained in the applicant's own category. Arbitrary designation of these channels as "commercial" channels that should be subject to competitive bidding will deprive non-commercial licensees of an important resource in developing their critical communications networks.
- Further sharing of non-SMR channels by SMR eligibles should be eliminated. Most of the problems that were cited by the Bureau in freezing intercategory sharing can be traced to the Commission's liberal policies of allowing commercial entrepreneurs to file speculative applications in the non-SMR categories. Now that the Commission is prepared to adopt specific licensing

---

<sup>1</sup> Order, DA 95-741, released April 5, 1995. UTC requested reconsideration of the Bureau's Order freezing intercategory sharing, however reconsideration was denied by *Memorandum Opinion and Order*, DA 95-1669, released July 28, 1995.

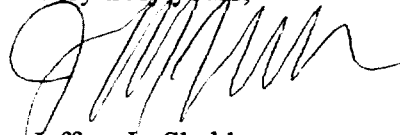
procedures for such wide-area, multichannel systems, there is no longer any reason to allow further SMR encroachment on private land mobile radio channels.

- Provisions on slow-growth for Industrial/Land Transportation, Business and Public Safety eligibles should be retained. To the extent the FCC proposes to eliminate slow-growth for SMR licensees, UTC urges the FCC not to eliminate these important provisions for non-SMR licensees. These provisions were originally adopted due to the unique financing, construction and operational needs of utilities and others that could not reasonably be expected to develop their wide-area radio systems within the normal construction requirements.
- The temporary freeze on intercategory sharing among the Industrial/Land Transportation, Business and Public Safety categories at 800 MHz should be lifted. The Bureau's *Order* freezing intercategory sharing was intended as a temporary measure to maintain the *status quo* pending the resolution of this docket. As noted above and in UTC's Petition for Reconsideration of the freeze *Order*, maintenance of the *status quo* is unacceptable to I/LT eligibles who must move forward with the development of their radio systems to meet current communications requirements.
- Action should be taken to restore the Industrial/Land Transportation, Business and Public Safety channels for use primarily by non-commercial users. To the extent purely speculative applications by SMR applicants have effectively shut-down further licensing in many parts of the country on I/LT and Business category channels, UTC recommends that the Commission take action to dismiss those applications and again make these channels available to the entities for whom they were originally allocated. Review of frequency search reports will show that a handful of companies have engaged in what appears to be a concerted effort to tie-up all available channels outside the SMR category, most likely as possible replacement spectrum should they or one of their affiliates be successful in the bidding. UTC submits that dismissal of these purely speculative applications would serve the public interest by (1) returning the channels for use by I/LT and Business Category eligibles; (2) reduce the need for I/LT and Business category eligibles to request channels from the Public Safety category; and (3) make for more competitive bidding for the upper 200 SMR channels by removing an unfair competitive advantage from the speculators who have filed these SMR applications outside the SMR category.

Regina Keeney  
September 29, 1995  
Page 4

Should you or your staff have any questions concerning UTC's comments in this matter, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Sheldon', with a stylized, flowing script.

Jeffrey L. Sheldon  
General Counsel

cc: Ralph A. Haller  
Laurence A. Atlas  
Daniel Phytheon  
Robert McNamara  
Rosalind Allen